

# Interpretation Memo

**NYSE**

New York  
Stock Exchange, Inc.

20 Broad Street  
New York, NY 10005

Member Firm Regulation

Number 89-10  
August 23, 1989

TO: MEMBERS AND MEMBER ORGANIZATIONS

ATTENTION: CHIEF EXECUTIVE, FINANCIAL AND OPERATIONS OFFICERS/  
PARTNERS AND COMPLIANCE DEPARTMENTS

SUBJECT: BROKER-DEALER CENSURED FOR VIOLATION OF SEC RULE 15c3-3  
AND DISCUSSION OF THE INTENT AND OBJECTIVE OF THE RULE

## Broker-Dealer Censure for Violation

The Securities and Exchange Commission (SEC) has censured a broker-dealer for, among other things, violating Rule 15c3-3 by substituting proprietary bank loans for customer bank loans prior to making the weekly Reserve Formula computation and reinstating the customer loans shortly thereafter. 1/

## Intent-Objective

The SEC has advised that the intent and objective of Rule 15c3-3, as indicated in SEC Release No. 34-9775 dated September 14, 1972, is..."to perfect the objective of the elimination of the use by broker-dealers of customer funds and securities to finance firm overhead and such firm activities as trading and underwriting through the separation of customer related activities from other broker-dealer operations".

In view of the foregoing, the SEC staff advised that broker-dealers that would otherwise have had a higher reserve deposit requirement should be aware that substitution of proprietary or non-customer bank loans for customer bank loans only for the week-end or on the day of the Reserve Formula Computation may be regarded as an intentional circumvention of the rule if the customer loans are reinstated shortly thereafter.

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1/ See In the Matter of Underwood, Neuhaus & Co., Incorporated (Release No. 34-25531, March 30, 1988).

In addition, the SEC staff has also advised that the following activities may be considered circumventions of the rule:

1. Funds are obtained by loaning customers' securities during periods between reserve computations. However, just before a computation is made, securities are borrowed from sources outside the firm and substituted for the customer securities in stock loan. The stock loans are then treated as not customer related loans and the respective credit is excluded from the formula computation. After the computation date the securities borrowed from the outside sources are returned and customers' securities once more become collateral for the funds obtained; or
2. Any other device, window dressing or restructuring of transactions made solely to reduce an excess of credits over debits in the Rule 15c3-3a formula computation and not otherwise a normal business transaction.

The staff of the SEC has stated that such techniques may be in violation of the requirements of the rule in that customer derived funds are used during the period between computations "...in areas of the firm's business such as underwriting, trading and overhead" contrary to the purpose of the rule.

Any questions regarding this matter should be directed to your Finance Coordinator.

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RETAIN ALL INTERPRETATION/INFORMATION MEMOS FOR FUTURE REFERENCE

YUI CHAN  
N.Y.S.E.  
20 BROAD STREET  
22ND FLOOR

IHQ